

# On Vaccine Nationalism, the ‘Slowbalisation’ and Zoonotic Diseases – Part I

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**Muratcan Sabuncu:** *Professor Peters, thank you for giving me the opportunity to discuss with you the coronavirus pandemic which has become one of the most important challenges that we face. I would like to begin our discussion with the most recent and promising news. A handful of vaccines have now achieved regulatory authorization or approval. Among them, the vaccine developed by Pfizer and Germany’s BioNTech has been found to be 95 per cent effective. Although several world leaders, including UN Secretary-General Antonio Guterres, President Xi Jinping of China, President Emmanuel Macron of France, and President Moon Jae-in of South Korea, speaking at the opening of the 73rd World Health Assembly (WHA) in May, referred to future Covid-19 vaccines as a “global public good”, there is a serious potential of vaccine nationalism. Do you think that a “my country first” approach will prevail, as it was the case with the 2009 pandemic of the influenza A virus H1N1, also known as swine flu, when wealthy countries bought up all the supplies? Do you think that humanity should have a fair and equitable distribution of good and harm? The EU has agreed to buy up to 300 million doses of the vaccine. Moreover, some countries, including the UK and the US, have already started their vaccination programs. Does that indicate the unequal distribution?*

**Anne Peters:** The WHO Director General has warned against a “vaccine nationalism”. And it currently looks as if a public-private partnership consisting of states, intergovernmental organisations (such as WHO, the World Bank, and the EU), the private sector (notably the firms developing and producing the vaccines), charities (notably the Bill and Melinda Gates Foundation), and NGOs are able to prevent this. The platform to implement sanitary solidarity is Covax. Covax is run under the aegis of GAVI (the “Global Alliance for Vaccines and Immunizations”) which is formally a foundation under Swiss law based in Geneva. Currently, 180 states which represent 90 percent of the world population participate in Covax (including the EU on behalf of its member states and China, but so far not the US and Russia). The participating self-financing states commit themselves to purchase vaccines through the facility which will then be distributed fairly also in low income states. In parallel, high and middle income states have ordered vaccines for their own populations independently – actually many more doses than those Covax participants have purchased through the facility. The prices have been quite volatile, dictated by the market logics, with the vaccine itself being a scarce good.

In contrast, immunity is a “global public good” at least in the wider sense prevalent in the United Nations and the WHO. With this buzzword, the global institutions signal that immunisation is a task in the global public interest, to which all should contribute in a spirit of solidarity. WHO and others have already suggested various

ethical frameworks to secure a fair and equitable allocation of the necessary medical products. In contrast, hard legal rules on the global vaccine distribution are not easy to identify. The international human right to health (Art. 12 ICESCR) offers some guidance, because it imposes moderate extraterritorial obligations on state parties. According to the UN Human Rights Committee's General Comment No. 14, state parties must respect the enjoyment of the right to health in other countries. This seems to imply that international law prohibits the hoarding of vaccines. It could thus be argued that states may buy only the amount needed to bring the transmission rate ( $R_t$ ) down to 1 in their country. Moreover, depending on the availability of resources, states must "facilitate access to essential health facilities in other countries, wherever possible, and provide the necessary aid when required", says the mentioned General Comment. This might mean that rich states are to some extent legally obliged to donate vaccines to poorer states, although precise parameters are lacking. And, of course, moral and political considerations strongly speak in favour of such aid, especially in the current context of emergency.

Another legal obligation is the WTO-based duty not to prohibit firms based in the country to export the vaccine. Art. XI GATT prohibits export restrictions, but Art. XI(2) allows members to prohibit temporarily exports "applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party". It would seem that the vaccine is "essential" in this sense. During the pandemic, WTO members already invoked this clause to justify the export bans on masks and other medical goods. To conclude, states have a special responsibility towards their own populations, as a corollary to their sovereignty. Democratic states are moreover formally accountable to their citizens. However, all states must also, according to their capacities, work towards a global, fair and equitable distribution. We need to discuss openly what this exactly involves, and which degree of "priority" to the own nation is morally and legally admissible.

**MS:** *The scientists who developed the Pfizer/BioNTech Covid-19 vaccine are a Turkish-German power couple. Can this potential vaccine, which is an immigration success story, become also a cure for the rising xenophobia?*

**AP:** I am not sure whether xenophobia is rising. According to Eurobarometer polls, the proportions of Europeans who see immigration as a "problem" is mounting in some states but going down in others. In any case, unfortunately most people do not seem to know who is behind BioNTech. This beautiful, encouraging, and heart-warming "personal" story should be spread much more!

**MS:** *Even before the promising results of the future Covid-19 vaccine, in the face of global shortages, many countries hoarded supplies of respirators, surgical mask, and gloves for their own hospital workers' use and imposed, in the first 4 months of the pandemic, export controls on local supplies of personal protective equipment, ventilators, or medicines. Has Covid-19 created the potential to encourage countries to become self-sustaining? Can this lead, in the long run, to deglobalisation, diminishing interdependence and integration between countries?*

**AP:** The Covid pandemic is a quintessential globalisation problem. The speed and spread of the contagion were due to the mobility of persons. The dependence of

societies on global value chains makes them more vulnerable: The lock-downs in the North dampened consumption and led to cancellations of sales orders which harmed the workers in the cheap production states. Concomitantly, the northern states were suddenly cut off from their supplies with whose production had been outsourced. Naturally, this sudden shock led leaders to reconsider national autarky. In addition, the reflexes of hoarding, closing borders, and the export bans on the medical products built on prior nationalist trends. The populist “my country first” attitudes had ironically been fuelled by the globalisation-induced anxiety of the ordinary labourers in the rich states who in fact suffered or gained little in the global competition but rather faced stagnation of income and job insecurity due to the outsourcing of production.

However, the initial closure moves have been revised and have been replaced by more sophisticated entry/exit schemes with quarantine obligations. Also, we see many examples of inter-state cooperation ranging from donations of equipment to treating patients from other countries in intensive care units. States seek to enhance their international reputation and gain influence by advising and assisting others. This shows how important good standing in the international community is for states. Although the hyperglobalisation of the 1990s and early millennium might have meanwhile been replaced by a “slowbalisation” (as the Economist called it), it is very unlikely that globalisation will be reversed. Consumers have become accustomed to cheap goods from all over the world, investors will not easily pull out their investments from abroad, and the pictures of the lifestyle in rich parts of the world will continue to attract migrants. And importantly, more than e.g. the abstract threat of climate change, the pandemic forces us to recognise that all humanity sits in “one boat”, suffers one fate, and can only go it together.

**MS:** *The European Union has been always seen as one of the most important economic and political integration projects with all the symbols showing its evolution into a federalist direction, including the EU flag, anthem and European single currency. Barriers to the movement of people have appeared even within the EU and lack of solidarity between member states facing the pandemic have been criticised by many. Does it show the fragility of the Union?*

**AP:** The somewhat erratic closures of national borders inside the EU during the first wave were a strong negative signal. However, the symbolic value of open borders could not and should not override the practical necessity. The stand-still of populations (“herds”) is a key principle of epidemic management. The reduction of mobility and the closing off of smaller groups is not intrinsically connected with nationalism. In fact, many sub-national entities, regions, communities, cities, are pursuing the same geographic containment strategy. At the same time, the travel bans bring back to mind the practical (both economic and personal) utility of pan-European mobility which had been taken for granted and had become too self-evident. A re-appreciation of this mobility more might lead to a renewed prestige of the EU. Also, the pandemic has motivated leaders in the European Council to adopt a historic ‘Next Generation EU’ recovery instrument’ which allows the EU to borrow €750 billion for financing non-repayable support and loans for the EU member states. This might be a key step towards a fiscal Union.

**MS:** *Domestic authorities have adopted measures including a broad spectrum of restrictions, from quarantines and isolation of individuals, to travel bans and lockdowns. We have been observing declaration of state of emergency after terror attacks and national disasters. Are we assisting to the birth of a “sanitary state of emergency”? Has the state of emergency, which by definition is temporary, the potential to become permanent? Are we capable of balancing sanitary measures with the standards of Rechtsstaat and human rights obligations?*

**AP:** Especially in the first wave of the pandemic, many states resorted to emergency-type measures available under their domestic law which usually involves an empowerment of the executive branch to regulate through orders and decrees, as opposed to waiting for the parliaments to pass ordinary statutes. Many states have moreover officially declared a public emergency under the relevant international and regional human rights treaties which then allows them to derogate in a summarial fashion from many human rights such as freedom of assembly or family life.

The quick declarations of public emergencies carry the danger that states merely pay lip service to the rule of law, as an empty ritual, and then do what they want without having to explain and justify their measures. However, legally speaking, even the human rights treaty-based public emergency is no law-free zone but policed by the international human rights monitoring bodies. These have pointed out that the declaration of such a public emergency but must satisfy material and formal requirements, and must notably be temporary. Other states remained in the normal mode and curtailed human rights on a case-by-case basis. For example, travel restrictions are a legitimate and lawful restriction of the right to free movement when they serve the legitimate aim of protecting public health, and are necessary and proportionate to that aim, that is when they strike a fair balance between the public interest and the exercise of the fundamental right. In the end, the law as such cannot prevent that states or any other authority violates also these rules. The best laws need to be applied by human beings, and there is never a full guarantee that these humans will not simply break or discard the laws.

*The interview was conducted for the Turkish Newspaper [T24](#) and will be jointly published by Verfassungsblog and T24.*

*The second part of the interview can be found [here](#).*

